



Paper No. 31

ECKHARD H. KUESTERS  
OLBON, SPIVAK, MCCLELLAND,  
MAIER & NEUSTADT, P.C.  
1755 JEFFERSON DAVIS HIGHWAY, FOURTH FLOOR  
ARLINGTON, VA 22202

**COPY MAILED**

**FEB 9 1996**

**OFFICE OF PETITIONS  
A/C PATENTS**

In re Application of  
James D. Arthur et al.  
Application No. 07/782,345  
Filed: October 24, 1991  
Attorney Docket No. 6926-002-20

:  
:  
:  
:  
:  
:  
ON PETITION

This is a decision on the petition, filed October 10, 1995, to withdraw the holding of abandonment in the above-identified application, or, in the alternative, under 37 CFR 1.137(a) to revive the above-identified application, or, further in the alternative, under 37 CFR 1.183 and 37 CFR 1.137(b) to waive the one year filing period requirement in 37 CFR 1.137(b) and to revive the above-identified application.

The petition to withdraw the holding of abandonment in the above-identified application is **DISMISSED**.

The petition under 37 CFR 1.137(a) to revive the above-identified application is **DISMISSED**.

The petition under 37 CFR 1.183 and 37 CFR 1.137(b) to waive the one year filing period requirement in 37 CFR 1.137(b) and to revive the above-identified application is **GRANTED**.

Petitioners' contention that they are entitled to a ruling by the primary examiner on their request to withdraw the holding of abandonment in the above-identified application is not well taken. While a Notice of Abandonment was mailed on May 3, 1993, petitioners' first request for reconsideration of the holding of abandonment in the above-identified application was not filed until May 1, 1995. In view of the untimeliness of this request to withdraw the holding of abandonment in the above-identified application (37 CFR 1.181(f)), any consideration given to the merits of such request is a matter of discretion.

Accordingly, the petition to withdraw the holding of abandonment in the above-identified application and under 37 CFR 1.137(a) to

revive the above-identified application are dismissed for the reasons set forth in the decision of August 9, 1995.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be: (1) accompanied by a proposed response to continue prosecution of that application, or filing of a continuing application, unless either has been previously filed; (2) accompanied by the petition fee as set forth in 37 CFR 1.17(m); (3) accompanied by a statement that the delay was unintentional; and, (4) filed either: (i) within one year of the date on which the application became abandoned; or (ii) within three months of the date of the first decision on a petition to revive under paragraph (a) of this section which was filed within one year of the date on which the application became abandoned. This petition does not meet condition (4) above.

37 CFR 1.183 states that:

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Commissioner or the Commissioner's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(h).

Under the circumstances of this application, it is appropriate to waive the one year filing period requirement in 37 CFR 1.137(b) on the condition of a disclaimer of a terminal portion of any patent which may issue on the above-identified application or on any application entitled to the benefit of the filing date of this application under 35 USC 120. The period to be disclaimed will be a terminal part of the patent to be granted equivalent to the period of abandonment. The period of abandonment will be computed to be the number of months lapsed from the date of abandonment to the date of filing a grantable petition. The terminal disclaimer fee of \$55.00 is also required.


The Terminal Disclaimer filed on May 18, 1994 has been accepted. The period disclaimed is thirty-five (35) months, which is equivalent to the period of abandonment.

Any continuing application filed from this application must contain a copy of this decision and a copy of the Terminal Disclaimer. The copies must be filed with a cover letter requesting the terminal disclaimer be recorded on the continuing application.

In accordance with petitioners' authorization, Deposit Account No. 15-0030 is being charged the \$55.00 terminal disclaimer fee and the \$130.00 petition fee (37 CFR 1.17(h)) for a petition under 37 CFR 1.183.

Telephone inquiries with respect to this decision should be directed to the Office of Petitions Staff at (703) 305-9282.

The application file is being forwarded to Examining Group 2200.

  
Robert W. Bahr  
Senior Legal Advisor  
Special Program Law Office  
Office of the Deputy Assistant Commissioner  
for Patent Policy and Projects

rw b